

COMMITTEE SCHEDULING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
of the Russell City Energy)	01-AFC-7
Center)	
_____)	

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 14, 2002

2:08 p.m.

Reported by:
Peter Petty
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Associate Member

Gary Fay, Hearing Officer

Michael Smith, Advisor

STAFF PRESENT

Arlene Ichien, Staff Counsel

Kae Lewis, Project Manager

Rick York

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Jeffery D. Harris, Attorney,
Ellison, Schneider and Harris

James R. Leahy, Development Manager
Calpine/Bechtel Joint Development

Douglas M. Davy, Project Manager
Foster Wheeler Environmental Corporation

INTERVENORS

Roger Beers, Attorney
representing East Bay Regional Park District

ALSO PRESENT

Jesus Armus, City Manager
City of Hayward

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1 P R O C E E D I N G S

2 2:08 p.m.

3 ASSOCIATE MEMBER PERNELL: Good
4 afternoon. This is a Committee Schedule
5 Conference for the Russell City application for
6 certification proceeding.

7 I am Commissioner Robert Pernell, the
8 Associate Member of the Committee reviewing this
9 matter. Commissioner Keese is the Presiding
10 Member, and he's away over at the Legislature.

11 To my right is Gary Fay, the Hearing
12 Officer assigned to the case. And to his right is
13 Commissioner Keese's Advisor, Michael Smith.

14 The purpose of today's conference is for
15 the parties to inform the Committee about recent
16 developments in the case and to recommend a
17 schedule for the Committee to complete its review
18 of the Russell City project.

19 I will now ask Mr. Fay, our Hearing
20 Officer, to make preliminary announcements and
21 conduct this conference. Mr. Fay, please.

22 HEARING OFFICER FAY: Thank you,
23 Commissioner Pernell. Good afternoon, everybody.
24 What we'd like to do is, as the Commissioner
25 mentioned, basically get an update for the

1 Committee, and then get some concrete
2 recommendations for a realistic schedule that will
3 allow us to complete the review of the Russell
4 City project.

5 So, what I'd like to do, since the
6 burden is on the applicant, is turn to Mr. Harris
7 and ask if he would bring us up to speed; and then
8 make his scheduling recommendations. And then
9 we'll go through the other parties. If they agree
10 or disagree, they can tell us.

11 MR. HARRIS: Thank you, Mr. Fay. I'm
12 Jeff Harris on behalf of the applicant. We have a
13 proposed schedule that we have talked to staff
14 about and we're prepared to share that with you in
15 a moment, and go through the specific dates.

16 As a little background, as you know
17 there was a workshop held last week to talk about
18 biological issues. I think that meeting was very
19 productive. I think we're making progress on
20 that.

21 For those of you who don't have all the
22 context there, we're looking at a mitigation
23 parcel which is located adjacent to the proposed
24 facility. It's, we think, an excellent mitigation
25 parcel and surprisingly we think everybody agrees

1 with us on that.

2 But the issue is always in the details,
3 and so we're working through many of those details
4 with the various resource agencies.

5 We have a couple of work products that
6 we want to deliver to staff in short order here;
7 and then we're also going to try -- when I say we,
8 I think everybody involved in the siting case, to
9 make sure that we can get the Fish and Wildlife
10 Service comfortable with the proposal, as well. I
11 think that's really kind of a key element in terms
12 of schedule driver.

13 We're working from the assumption that
14 we have in the past that for the Commission to
15 proceed into evidentiary hearings you're going to
16 have to have a pretty good idea of what that
17 biological opinion looks like.

18 As you recall, the Commission is not
19 required to have in its hand the biological
20 opinion to go forward to evidentiary hearings.
21 And, in fact, there's Commission precedent for
22 having the biological opinion delivered after
23 certification. But everybody likes to have it as
24 early as possible, obviously.

25 Just so you know, there has been an

1 ongoing process of informal consultation for quite
2 some time. It was our hope and expectation for
3 quite awhile that we would be able to resolve
4 through informal. The Service is now taking the
5 position that they want the formal section 7
6 process to move forward.

7 And we think that we're in very good
8 shape, having done those informal discussions, and
9 actually given them a draft biological assessment.
10 And we really are down to the details.

11 One of the issues that the Committee is
12 going to have to wrestle with is what kind of
13 information do you need for the hearings, and what
14 kind of information can be developed post-
15 certification.

16 As you know, you often deal with
17 environmental issues by putting together
18 conditions of certification that require
19 development of plans. And I think we're still all
20 struggling with the amount of detail that you need
21 in the siting process versus the amount of detail
22 that will be developed post-certification. And
23 that's not a bright line issue, but it's one
24 that's very important, I think, to allow this to
25 move forward.

1 So, all that is kind of background on
2 the biological issues that we've got moving
3 forward.

4 There were other issues about noise;
5 we're working through that issue, as well, with
6 the folks in the Service and the various resource
7 agencies.

8 It's an interesting bit of a quandary.
9 There are very clear standards when you're dealing
10 with the species known as human beings. But for
11 other species those clear standards don't always
12 exist.

13 And so we're really working proactively
14 with the resource agencies to figure out what
15 exactly is the biologically important sound level.
16 So, in other words, what level of noise could
17 possibly have an effect on the life cycle of these
18 various species of concern.

19 And so, frankly, the answers aren't that
20 clear from the biological perspective with each
21 individual species, but we have some good ideas as
22 to how we're going to resolve those issues.

23 We face this similar issue in other
24 cases involving, you know, raptors and those kind
25 of things, so there is some Commission precedent

1 that we're going to be looking to to move through
2 those issues, as well.

3 The final issue that we discussed at the
4 workshop deal with raptors and raptor perching.
5 The concern there, the biological issue was
6 whether the power plant would create new perching
7 opportunities for raptors.

8 And so you may remember the wave design
9 that characterizes the plant. We've worked with
10 the biologist to figure out how to basically
11 prevent those raptors from perching on those
12 facilities and other facilities. And I think with
13 that issue we've made a lot of progress.

14 So, that's kind of a thumbnail, if you
15 will, overview of the workshop.

16 There are several other issues that
17 we've worked through with staff, as well, but I
18 wanted to start with that one.

19 In terms of other updates for you we've
20 been working with the Bay Area District on receipt
21 of the final determination of compliance. We've
22 heard dates as early as the 22nd, but we're
23 reflecting a date of the 29th in our proposed
24 schedule. Just because the 22nd was the ambitious
25 date, and the 29th was supposedly the outside

1 date. So we went with the outside date. So we've
2 given you a conservative approach there.

3 We think that information is going to go
4 a long way to addressing the air issues that
5 relate to the project.

6 In terms of moving forward, I think
7 maybe this is a good time to hand out our proposed
8 schedule, and we can talk you through some of
9 those items. So, if we could hand those things
10 out now, it would be great.

11 Just for clarity's sake this proposed
12 schedule has two sets of dates. The left-hand
13 dates are the original dates; the right-hand
14 dates, the far right-hand column, is the important
15 column for your review now. That's the proposed
16 revised dates that gets us all the way through to
17 decision in this matter.

18 So, if you'd like, Mr. Fay, I can just
19 go through each one of those individually.

20 HEARING OFFICER FAY: Sure.

21 MR. HARRIS: The first date that we have
22 is the Bay Area Air Quality Management District
23 filing the FDOC. I mentioned that date of the
24 29th.

25 Also on that date, if not sooner, we're

1 going to be filing, as well, a revised
2 hydrological study. Again, for those of you who
3 aren't as familiar with the mitigation package
4 that's being developed down here, one of the
5 questions is what are the various influences of
6 water flow through the parcel that we're proposing
7 as mitigation.

8 That was a more complex issue when we
9 were talking about bringing salt water into that
10 area. Well, that's no longer on the table. But
11 we still need to talk about how water transgresses
12 and moves through the parcel and through the
13 mitigation parcel.

14 Over-simplifying things, you have a salt
15 water marsh and you have some fresh water
16 influences. You want to make sure that you get
17 the right balance for where that fresh water goes,
18 so you don't affect either habitat adversely.

19 We think that's a modeling exercise that
20 we can put together. We've been informed that
21 there are some base documents that we can work off
22 of to put that together. And our folks are
23 dedicated to getting that information as soon as
24 possible.

25 But that's kind of, from the applicant's

1 perspective that's the first kind of long lead
2 time item that we have that's due to folks.

3 This morning, moving down to the second
4 item, in discussions with staff, staff expressed
5 an interest in having another workshop once that
6 more detailed hydrological plan is put in place.
7 We're in agreement with that workshop concept, and
8 we've actually, at lunchtime, went back and
9 adjusted our schedule to allow for this workshop.

10 We think it's a good opportunity for
11 public input and for public review of the
12 biological issues. And I think the date of
13 February 11th is a date that we think works well
14 with the proposal.

15 Moving down to the next item, staff
16 filing of the addendum for the staff assessment.
17 We allowed basically three weeks after that
18 workshop for the staff to close out all of their
19 issues and to put that staff supplement together.

20 Recognizing that for most issues the
21 staff is probably where they need to be already,
22 but I think we're really down to biology and air
23 issues; those are the primary issues that are
24 still outstanding for the project. And visual, as
25 well.

1 So, hopefully that additional time will
2 allow all those sections to get buttoned up.

3 Prehearing conference we've got
4 scheduled for the 8th of March. Following up that
5 with evidentiary hearings early in March, March
6 18, 19 and 20. Followed by the Committee issuance
7 of the PMPD on April 19. And then the decision on
8 the 29th.

9 Just for your edification, the dates in
10 terms of the time between the end of hearings and
11 the issuance of the PMPD we've pretty much used
12 the same timeframes that were in the original
13 order.

14 So I know the Committee always feels
15 squeezed, as they should, when they have to put
16 together such a big document. We've been, I
17 think, true to those dates in terms of number of
18 days.

19 Overall, that's our proposed schedule.
20 We had talked informally about whether it made
21 sense to kind of bifurcate the process, and let me
22 touch on that briefly. We're not recommending
23 that, but let me touch on it just for your
24 understanding of what we talked about.

25 Again, we're basically, I think, down to

1 air issues and visual and biology. And we had
2 originally an earlier date for the staff
3 assessment. And we talked about whether it made
4 sense to keep that early date and have a part one
5 staff assessment come out, and then the part two
6 staff assessment, and move forward on a more
7 aggressive schedule.

8 We're not recommending that right now.
9 I think the staff would prefer a single document.
10 If we can keep this schedule we would prefer a
11 single document. I put that out there mostly for
12 your consideration if circumstances down the road
13 change, the need to consider whether we bifurcate
14 out those I think three more difficult issues into
15 a separate document.

16 That may still happen, but I think we
17 can hold the hearing dates, as well. So there's
18 some flexibility in this proposed schedule. We
19 didn't put all that detail in here, but we wanted
20 you to know that's part of the thinking that's
21 been going on.

22 ASSOCIATE MEMBER PERNELL: Okay, --

23 MR. HARRIS: I think --

24 ASSOCIATE MEMBER PERNELL: Are you done?

25 MR. HARRIS: I was just about to say I

1 think with that I'll make myself available for
2 questions. So, yes.

3 ASSOCIATE MEMBER PERNELL: Yeah, I do
4 have two observations. One of them is on your
5 biological, by the time we have the workshop would
6 you have worked out with Fish and Game some of
7 their concerns? Do you expect to be done with
8 that?

9 MR. HARRIS: I think we'll have hoped to
10 have worked out most of those issues, yes. We're
11 putting together a hydrological study. That's the
12 last kind of deliverable that we have.

13 There are other issues on the table. I
14 mentioned noise and the raptors. I think we've
15 got the raptors thing pretty much put to bed.

16 Noise is an interesting one, but that's
17 going to require continued dialogue between the
18 various agencies and the applicant. And we've
19 committed to continue to have that dialogue. We
20 had a very good dialogue the other day.

21 The thought would be not to make that
22 workshop the only next event. Let me rephrase
23 that. Basically what we're saying, during that
24 interim period between now and the workshop
25 there'd be a focused effort to get the rest of

1 these biological issues resolved. And hopefully
2 we'd come into that workshop with just a very few
3 issues.

4 And, again, I think that workshop may
5 very much focus on the distinction between what do
6 we have to have now to go to hearings, versus what
7 do we develop post-certification.

8 And, again, I think the agencies'
9 inclination is going to be to have everything now.
10 The applicant obviously is going to be looking at
11 those and trying to figure out what is going to
12 need a detailed development after certification.

13 ASSOCIATE MEMBER PERNELL: And then my
14 final observation is your hearings, are they -- so
15 you're suggesting that these are the evidentiary
16 hearings?

17 MR. HARRIS: Yes.

18 ASSOCIATE MEMBER PERNELL: You're
19 suggesting three consecutive days of hearings?

20 MR. HARRIS: We're hoping not to need
21 all three days. In fact, you know, with most of
22 the issues, outside the three I've kind of
23 highlighted, we think that there aren't any
24 substantive issues that people will bring forward.

25 It would be great to be able to take

1 some of those by stipulation or by declaration,
2 but obviously you won't know until you've seen
3 parties' positions on whether you can do that.

4 The three controverted issues, if you
5 will, at this point, the ones that seem to need
6 the most work, I would imagine that's probably a
7 full day's worth of hearings.

8 So I'm thinking three is probably more
9 than we need, but the idea is to start them,
10 notice them such that we can march right through
11 them in less than three days if we can.

12 HEARING OFFICER FAY: Just for
13 clarification, are the issues with both Fish and
14 Game and Fish and Wildlife Service, or is it
15 predominately just the feds?

16 MR. HARRIS: I think the timing issues
17 are predominately because of the section 7
18 process. In terms of the substantive issues, I
19 think I'm probably going to want to turn to Doug
20 Davy and I saw Rick York come to the table, as
21 well, and let them talk a little bit more about
22 those specifics.

23 HEARING OFFICER FAY: And the reason I
24 wanted to get into it a little more is obviously
25 there's a jurisdictional difference that the

1 Committee has to take into account.

2 DR. DAVY: I'm Doug Davy; I'm the
3 application Project Manager, consultant to
4 Calpine.

5 Fish and Game has participated very well
6 in these proceedings. They have attended meetings
7 with the Fish and Wildlife Service and they've
8 attended workshops.

9 They have commented from time to time,
10 and they haven't commented formally in writing,
11 but my assessment is that they seem to be in
12 agreement with the direction that we're moving.

13 They have not raised any additional
14 issues, in addition to what the Fish and Wildlife
15 Service has raised. Would you agree, Rick, pretty
16 much?

17 MR. LEAHY: I'm Jim Leahy; I'm Calpine's
18 Development Manager. I'd like to actually quote
19 the last comment they gave us, and that was, I
20 believe, get on with it.

21 ASSOCIATE MEMBER PERNELL: Well, that's
22 what we all want to do.

23 HEARING OFFICER FAY: On the other hand,
24 Fish and Wildlife Service has more concerns, I
25 take it?

1 DR. DAVY: Fish and Wildlife Service
2 informally agreed at several points in the process
3 that -- they indicated that they were leaning
4 towards the informal process, the informal
5 consultation by which they would write a letter of
6 concurrence about the project.

7 They did send a letter saying what their
8 remaining concerns were to be resolved. And they
9 agreed with us, I think, essentially that we were
10 moving forward and making progress towards
11 resolving those concerns.

12 They have said -- when we described to
13 them in greater detail what our mitigation would
14 be for the wetlands impacts, that was the point at
15 which they said we will require formal
16 consultation.

17 My understanding of their concern over
18 that issue was simply that our wetland mitigation
19 will take place in the habitat of a protected
20 species.

21 Some of our wetland creation activities
22 will take place in salt marsh harvest mouse
23 habitat. Therefore, they need section 7
24 consultation primarily for our mitigation plan.
25 But really not for the affects of the project,

1 itself.

2 Although we have not come to conclusion
3 on the noise issue.

4 MR. HARRIS: And I do want to highlight
5 that point, as well, because most of the
6 biological issues, I think there's 1.628 acres of
7 wetlands on site. So in terms of a primary
8 resource we're talking about, you know, 1.628
9 acres.

10 What we've developed here as a
11 mitigation plan involves about 26 acres. And the
12 thing that we like about this plan is that it
13 enables the project to have a nice symmetry, if
14 you will, with the local system of preservation.

15 And essentially what we've tried to do
16 by offering up that much mitigation is take the
17 whole question of biological issues off the table.
18 In retrospect it would have been easier maybe to
19 not take that route, but that's not the way the
20 project wanted to go, and that's not the way
21 Calpine wanted the project to go forward.

22 So, in a sense, the biological issues
23 arise largely out of the proposed mitigation
24 parcel, which does have some habitat values there.

25 And I want to raise that because I think

1 in the long run we're better off for having taken
2 that approach. We could have taken a different
3 approach, but I think that's not the cooperative
4 spirit that's developed here.

5 HEARING OFFICER FAY: Okay. Anything
6 further then from the applicant?

7 Staff comments on this? Do you support
8 the revised schedule set forth by the applicant?

9 MS. LEWIS: Yes. I'm Kae Lewis, Project
10 Manager. We do. We have conditions, and we
11 realize that this schedule is ambitious. It makes
12 assumptions about behavior of U.S. Fish and
13 Wildlife, and that's always a little dangerous to
14 do.

15 HEARING OFFICER FAY: Let's go off the
16 record for a moment.

17 (Off the record.)

18 HEARING OFFICER FAY: Start again,
19 please.

20 MS. LEWIS: Yes, I'm Kae Lewis, Project
21 Manager for the Energy Commission.

22 HEARING OFFICER FAY: Can everybody hear
23 Ms. Lewis? Everybody should speak right into the
24 mikes, especially because of the
25 telecommunication.

1 MS. LEWIS: We did discuss the schedule
2 with the applicant. And we do agree with it,
3 provided that certain events happen.

4 And first of all, we need the U.S. Fish
5 and Wildlife Service to accept the biological
6 assessment, which a number of the things that were
7 just discussed by the applicant will come in the
8 form of a supplement to the biological assessment.

9 U.S. Fish and Wildlife has to indicate
10 that they accepted that. And also we'll need an
11 FDOC from the Air District. And we will need some
12 information in a number of areas which the
13 applicant had mentioned, air quality, visual
14 resources. And also we need additional
15 information on the laydown and offsite parking
16 areas.

17 The applicant has indicated that they
18 are going to supply all of that remaining
19 information, most of it this week, and the
20 remainder next week.

21 HEARING OFFICER FAY: And if that
22 information comes in as per the revised schedule,
23 then staff could file its staff assessment on
24 March 5th, is that correct?

25 MS. LEWIS: Yes, if everything comes in

1 as we're --

2 HEARING OFFICER FAY: Okay.

3 MS. LEWIS: -- as we're indicating here.

4 HEARING OFFICER FAY: All right. And do
5 you have anything further to add in terms of
6 bringing us up to date to what Mr. Harris went
7 over?

8 MR. YORK: My name is Rick York. I'm a
9 Staff Biologist for the Russell City project here
10 at the Energy Commission.

11 Earlier on the applicant talked about
12 Fish and Game versus Fish and Wildlife Service.
13 The Department of Fish and Game will not be
14 issuing a take permit on this project; however
15 they have been active participants in the meetings
16 that we've had. And that's the difference between
17 Fish and Game and Fish and Wildlife Service.

18 The Fish and Wildlife Service will be
19 providing a take permit through the biological
20 opinion. And that's why we are listening to what
21 Fish and Game has to say, and try to make sure
22 that those thing are addressed by the Fish and
23 Wildlife Service in their opinion.

24 So the agencies are participating very
25 well, but that's why Fish and Wildlife Service may

1 take a little longer. And that's what this
2 schedule does reflect. A little more time for the
3 Fish and Wildlife Service to be even more involved
4 with this project, to help us kind of finish some
5 of the details off.

6 Okay, so no take permit from Fish and
7 Game; will be a take permit from the Fish and
8 Wildlife Service.

9 HEARING OFFICER FAY: All right.
10 Anything further from the staff?

11 MS. LEWIS: I think the last thing I
12 wanted to mention is that the staff is working on
13 an analysis of the KFAX tower relocation. And we
14 expect to file that, send out to the public in
15 draft form within two weeks.

16 HEARING OFFICER FAY: In two weeks from
17 today?

18 MS. LEWIS: Right, within two weeks.

19 HEARING OFFICER FAY: Within two weeks.
20 And what will that be termed? How do we know how
21 to look for it? Is it just an analysis of the
22 tower's impacts? Or is it --

23 MS. LEWIS: It has a long title as I
24 recall. But the purpose of it is to identify any
25 CEQA impacts of the relocation of the towers that

1 are now existing on the site where the plant is
2 going to be located.

3 HEARING OFFICER FAY: All right.
4 Anything further from the staff?

5 MS. LEWIS: I think that's it.

6 HEARING OFFICER FAY: Okay, Mr. Beers
7 from the Park District, your client's take on all
8 of this?

9 MR. BEERS: Yes, Roger Beers
10 representing the East Bay Regional Park District.

11 We've been involved with negotiations
12 with Calpine to resolve some of the issues
13 relating to the wetland mitigation property and
14 other issues of concern to the Park District.

15 We've reached a point at which we're, I
16 believe, very close to an agreement. But it isn't
17 signed, sealed and delivered as of yet; and there
18 is at least one item that's still the subject of
19 negotiation. My sense is we're 99 percent there.

20 As you know, the Park District had an
21 original deadline for filing comments of January
22 7th, that is comments on the staff assessment.
23 That was graciously extended successively to
24 today's, actually to tomorrow's date.

25 And it seems to me, as a lawyer who is

1 paid to be pessimistic, I need to reserve out that
2 possibility that we won't reach agreement with
3 Calpine, however unlikely that may be.

4 And so I don't think that anything
5 that's said here about a schedule would be
6 affected by what we're doing here, because we
7 really do anticipate reaching an agreement, but
8 will need some more time just as a backstop for
9 the filing of comments on the staff assessment if
10 we're unable to reach an agreement.

11 HEARING OFFICER FAY: You're saying that
12 you're unlikely to file comments tomorrow, but
13 that you are asking for yet another extension --

14 MR. BEERS: Correct.

15 HEARING OFFICER FAY: -- on the comment
16 period?

17 MR. BEERS: And that's so that we'll --
18 the Board of Directors of the East Bay Regional
19 Park District is meeting tomorrow evening. What I
20 hope is that we'll be able, by then, to present
21 our Board a draft of an agreement which is
22 recommended by both sides for their clients to
23 sign.

24 And we really are down to so few items
25 that I'm hopeful that that's the way things will

1 be done, particularly because there's a Board
2 meeting scheduled for tomorrow night.

3 And I'd really just like, let's say,
4 another week extension of the deadline for the
5 filing of staff comments, so that we can get an
6 agreement wrapped up and hopefully eliminate the
7 necessity for filing those comments. But at least
8 we'll have that if something falls through.

9 HEARING OFFICER FAY: Let me ask Ms.
10 Lewis, does that cause a problem for the staff to
11 make use of such comments if they come in a week
12 later?

13 MS. LEWIS: No. That's fine.

14 HEARING OFFICER FAY: Does the applicant
15 have any objection to an extension like that?

16 MR. HARRIS: No, we have no objection.

17 HEARING OFFICER FAY: All right.

18 ASSOCIATE MEMBER PERNELL: Question.
19 How often do your board meet?

20 MR. BEERS: You know, I'm not sure about
21 that. I think it's every two weeks or so, but
22 they are meeting tomorrow night.

23 HEARING OFFICER FAY: If there's any
24 other party on the line in the case, or agency,
25 that has a concern about this one-week extension

1 for comments, please speak up now.

2 If the Committee grants that it would
3 apply to all the parties for commenting on the
4 initial staff analysis.

5 All right, I hear no objection.

6 I discussed this with Commissioner
7 Pernell and the Committee's going to grant Mr.
8 Beers' request for one-week extension. So, any
9 comments due on the initial staff analysis are due
10 by January 22nd.

11 And staff tells us that that will not
12 delay their product on the followup addendum.

13 And, Mr. Beers, when you say 99 percent
14 agreement, that's closure on all the issues
15 including your concerns about the towers?

16 MR. BEERS: I'm hopeful that that will
17 be dealt with, also.

18 HEARING OFFICER FAY: Okay, and are you
19 aware of the scope of staff's analysis of the
20 towers?

21 MR. BEERS: I'm not, I mean I have a
22 general sense of the scope of that analysis, but
23 I've not followed the development of the analysis.

24 Certainly, if we reach agreement in a
25 way that we believe renders that analysis

1 unimportant, at least insofar as it deals with
2 impacts to the Park District, we would give notice
3 immediately, so that further work on that score
4 wouldn't be needed.

5 HEARING OFFICER FAY: Okay. Well, the
6 analysis is coming out when, Ms. Lewis?

7 MS. LEWIS: I think by the end of next
8 week it should be completed.

9 HEARING OFFICER FAY: Okay. It may not
10 affect that, and, of course, the Park District is
11 only one --

12 MR. BEERS: Correct.

13 HEARING OFFICER FAY: -- party
14 interested in such an analysis. But I just wanted
15 to, on behalf of the Committee, have some level of
16 comfort that the scope of the analysis would
17 address the concerns of the Park District in terms
18 of environmental impacts.

19 MR. BEERS: We had an initial meeting in
20 which we discussed the Park District's concerns
21 with the staff. And my understanding is that the
22 analysis being done is an outgrowth of, not
23 necessarily caused by, but at least is an
24 outgrowth of some of the discussions that we had
25 there.

1 So I'm anticipating that the analysis
2 that staff has in the works really does cover the
3 scope of concerns that we've expressed.

4 HEARING OFFICER FAY: Okay.

5 ASSOCIATE MEMBER PERNELL: I think one
6 -- oh, I'm sorry.

7 MS. LEWIS: Just going to follow up with
8 that. We believe that it does address the Park
9 District's needs.

10 HEARING OFFICER FAY: Okay.

11 ASSOCIATE MEMBER PERNELL: I think one
12 of the scenarios that will be important is whether
13 or not the Board take action, because if we have
14 to wait a month or whenever the Board meets again,
15 that can pose some problem for the schedule.

16 So, I want to bring that up because it's
17 critical, at least with this timeline, that staff
18 is accommodating an additional week and so is the
19 Committee, but, you know, we wouldn't want to see
20 that drag out because it kind of throws everything
21 off.

22 MR. BEERS: I understand.

23 MS. LEWIS: Also I might add that our
24 staff biologist informed me that if we get
25 comments from the Park District that are

1 voluminous, that that may impact the schedule.

2 So I would like to make that a condition
3 of agreeing to the March 5th staff assessment
4 date.

5 ASSOCIATE MEMBER PERNELL: Okay, any
6 objection from --

7 HEARING OFFICER FAY: Well, I think the
8 understanding we've always had is that by granting
9 these extensions we're increasing the likelihood
10 that the comments would be brief or none at all,
11 at least from the Park District. And perhaps from
12 other parties, too, as more issues get resolved.

13 Anything further, Mr. Beers?

14 MR. BEERS: No.

15 HEARING OFFICER FAY: Okay. Is any
16 other party represented here? Okay, can I ask if
17 there's comments from any of the people on the
18 phone?

19 MR. ARMUS: This is Jesus Armus with the
20 City of Hayward.

21 HEARING OFFICER FAY: Yes, Mr. Armus,
22 did you wish to make a comment?

23 MR. ARMUS: I just wanted to get --
24 before answering that I wonder if someone could
25 just review the dates that were mentioned at the

1 outset, because they were offered so quickly that
2 some of them were not -- I was not able to jot
3 some of them down.

4 HEARING OFFICER FAY: Sure, and I'll ask
5 Mr. Harris to be sure to fax a copy of the
6 schedule to you that he proposed today.

7 If I can just go over those quickly. I
8 assume you heard the conditions that Ms. Lewis
9 placed on being able to meet this schedule on the
10 part of the staff.

11 MR. ARMUS: I did, thank you.

12 HEARING OFFICER FAY: The proposal is
13 for the final air quality determination of
14 compliance on January 29th.

15 For the applicant's filing the
16 hydrological study on the same day.

17 Biological workshop on February 11. The
18 staff files its addendum to the staff assessment
19 on March 5.

20 A prehearing conference on March 8. And
21 evidentiary hearings proposed for March 18 to 20.
22 And the prehearing conference and the hearings are
23 subject to what the Committee can schedule.

24 So that is just proposed at this time.

25 MR. ARMUS: With respect to the

1 biological workshop, is that a continuation of the
2 one that was held recently?

3 HEARING OFFICER FAY: Well, I presume
4 staff would separately notice it, but it would
5 continue to deal with the same issues, I think.
6 Mr. York is shaking his head yes.

7 MR. ARMUS: And is that intended to take
8 place in Sacramento or in Hayward?

9 HEARING OFFICER FAY: I'll let the staff
10 tell you.

11 MR. YORK: We're planning on scheduling
12 in Hayward, and, yes, it will be a continuation of
13 probably the same three topics we discussed at the
14 last workshop, -- deterrents, noise and the
15 overall habitat compensation plan.

16 MR. ARMUS: And then lastly, with
17 respect to the tower relocation comments, in light
18 of the fact that the City has approved the
19 environmental clearance, how is that being
20 addressed in the staff work being done right now?

21 HEARING OFFICER FAY: Ms. Lewis?

22 MS. LEWIS: The staff is doing an
23 analysis of the CEQA impacts and we realize that
24 the City has permitted that project, and that we
25 are looking at some of the same issues. But it's

1 considered a separate analysis.

2 MR. ARMUS: What's a little confusing to
3 me is that given that a use permit was granted
4 with the appropriate environmental clearance to
5 relocate those towers, I'm not sure -- and so
6 those could take place independent of any action
7 on the part of the Energy Commission, I'm not sure
8 what the analysis is examining.

9 MS. LEWIS: We do realize that it is
10 permitted, and this is not jeopardizing that in
11 any way. But if we, in our evaluation, see that
12 there is an impact then we may suggest conditions
13 on the applicant for the tower site.

14 MR. ARMUS: How would those be
15 reconciled with the conditions that have already
16 been established by the City?

17 MS. LEWIS: They would not be contrary
18 to those.

19 MR. ARMUS: Thank you.

20 HEARING OFFICER FAY: Anything further,
21 Mr. Armus?

22 MR. ARMUS: No. Thank you very much.

23 HEARING OFFICER FAY: Okay. Any
24 comments from anybody else on the line? I don't
25 hear from anybody.

1 I'll turn to Ms. Mendonca, our Public
2 Adviser.

3 MS. MENDONCA: Thank you, Gary. Sorry,
4 my cold is just choking me up here.

5 The Public Adviser's Office has received
6 a communication from Howard Beckman, who is a
7 member of the public. And he is asking a very
8 generic general question having stated that he
9 could not attend today, and he could not join in
10 on the phone conference.

11 His question was what is the ability of
12 the Energy Commission to delay a fast track, six-
13 month certification process and still retain the
14 statutory fast track procedures.

15 Again, a generic general overall
16 scheduling question.

17 HEARING OFFICER FAY: Yeah. I think a
18 short answer to Mr. Beckman's concern is that even
19 with the schedule proposed by the applicant, which
20 is subject to review by the Committee, and the
21 Committee would be issuing notices to effectuate
22 this, nevertheless, even with that schedule there
23 is at least a 30-day, more than a 30-day review
24 period between the time the proposed decision is
25 issued by the Committee and the time the

1 Commission considers that proposed decision for
2 adoption.

3 So the public would have, under this
4 proposal, more time than under the standard CEQA
5 review, plus parties will have had months to
6 review the various staff analyses.

7 So, since we don't have Mr. Beckman I
8 can't learn whether that addresses his concern.
9 But, I just want him to know that even though the
10 terminology relates to a shorter process than the
11 12-month process, in fact for the critical aspects
12 when the public has an opportunity to review this
13 in terms of workshops and looking at the various
14 documents that are produced by the Energy
15 Commission, I believe there's as much time as in
16 the 12-month process.

17 So, anybody else wish to comment on
18 that?

19 ASSOCIATE MEMBER PERNELL: I would just
20 add that the same types of analyses have to be
21 adhered to as the 12-month process. In other
22 words, there's no short cut on environmental
23 issues or any other issues as it relates to these
24 projects.

25 It mainly puts the burden on the

1 applicant to get their information in up front.

2 MR. HARRIS: Mr. Fay, if I could, I'd
3 just make the observation as well that this isn't
4 the last opportunity for the public to
5 participate. There are the workshops, the
6 hearings, the public testimony or public comment
7 during those hearings. And then the right to
8 comment on the PMPD.

9 So, I know it's frustrating when people
10 can't make every meeting. I just wanted to point
11 out that there are a lot of opportunities going
12 forward for continued participation.

13 HEARING OFFICER FAY: Right. And I
14 think the terminology of some of these expedited
15 cases may be causing more concern than the actual
16 way the cases are being handled, especially in
17 this situation.

18 Ms. Mendonca?

19 MS. MENDONCA: I just want to say thank
20 you for addressing the concern, and I'll make sure
21 that Mr. Beckman's comments are docketed. And
22 that when the transcript is available I will see
23 to it that he gets an electronic copy of the
24 transcript so that he can see that everybody
25 considered his point.

1 HEARING OFFICER FAY: Great.

2 MS. MENDONCA: Thank you very much.

3 HEARING OFFICER FAY: Thank you.

4 Okay. I think we've covered the

5 business that we had today. Any concluding

6 remarks by anybody?

7 Nothing further to add. Okay, this

8 looks promising, and the next events are really

9 for the applicant to deliver and for the staff to

10 notice in terms of the workshop.

11 So, we'll look forward to seeing those.

12 Thank you all very much. We're adjourned.

13 (Whereupon, at 2:50 p.m., the conference

14 was concluded.)

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I, PETER PETTY, an Electronic Reporter,
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